

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION**

MICHAEL E. SPREADBURY,

CV 11-64-M-DWM-JCL

Plaintiff,

vs.

ORDER

BITTERROOT PUBLIC LIBRARY,
CITY OF HAMILTON,
LEE ENTERPRISES, INC., and
BOONE KARLBERG, P.C.,
DR. ROBERT BROPHY, TRISTA
SMITH, NANSU RODDY,
JERRY STEELE, STEVE SNAVELY,
STEVEN BRUNER-MURPHY,
RYAN OSTER, KENNETH S. BELL,
and JENNIFER LINT

Defendants.

Plaintiff Michael Spreadbury moves to dismiss this entire action under authority of Fed. R. Civ. P. 41(a)(1)(A)(i). Spreadbury states that all Defendants have been unwilling to agree to terms of a settlement agreement that he proposed.

Rule 41(a)(1)(A)(i), however, is not the proper authority for Spreadbury's motion. A dismissal under that Rule is permitted only if it is filed before any opposing party has filed an answer to the complaint, or a motion for summary judgment. The circumstances of this case do not satisfy Rule 41(a)(1)(A)(i).

Instead, Fed. R. Civ. P. 41(a)(2) provides that “an action may be dismissed at the plaintiff’s request only by court order, on terms that the court considers proper.” Because Spreadbury requests dismissal of this action, the Court deems it appropriate to construe his motion as filed under Rule 41(a)(2).

The Court has broad discretion to dismiss an action at the plaintiff’s request under Rule 41, and on terms the Court deems proper. *Hargis v. Foster*, 312 F.3d 404, 412 (9th Cir. 2002). This discretion includes the authority to dismiss an action with prejudice even if the plaintiff does not specify in the motion whether the plaintiff is seeking dismissal with or without prejudice. *Id.*

Here, Spreadbury does not indicate in his motion whether he requests dismissal with or without prejudice. In response to the motion, Defendant Lee Enterprises, Inc. — the sole remaining defendant — states it does not oppose the dismissal provided it is with prejudice.¹

Under the circumstances of this case, given the parties’ extensive litigation of Spreadbury’s claims, the multiple summary judgment rulings, and the previous

¹Spreadbury’s motion to dismiss is moot as to all other Defendants in this action because all of Spreadbury’s claims against the other Defendants have previously been dismissed, and Judgment has been entered on May 30, 2012, in favor of Defendants Bitterroot Public Library, City of Hamilton, Dr. Robert Brophy, Trista Smith, Nansu Roddy, Jerry Steele, Steve Snavelly, Steven Bruner-Murphy, Ryan Oster, Kenneth Bell and Jennifer Lint.

dismissal of the majority of Spreadbury's claims, the Court deems it appropriate to exercise its discretion to impose dismissal with prejudice as a term of the dismissal. **THEREFORE, IT IS HEREBY ORDERED** that Spreadbury's Second Motion for Voluntary Dismissal is **GRANTED**, and all of Spreadbury's remaining claims are **DISMISSED** with prejudice under Fed. R. Civ. P. 41(a)(2). This Order, however, is subject to reconsideration if, on or before **June 7, 2012**, Spreadbury either (1) files a notice advising the Court that he requests an opportunity to be heard as to why the dismissal should not be with prejudice, or (2) withdraws his motion to dismiss.

DATED this 31st day of May, 2012

/s/ Jeremiah C. Lynch
Jeremiah C. Lynch
United States Magistrate Judge